IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 32104 of 1998

Between:

Pavuluri Sreerama Murthy, S/o. Krishna

R/o. Tenali.

..... PETITIONER

AND

1. The Presiding Officer, Labour Court, Guntur.
2. Guntur District Cooperative Central Bank Limited, Tenali.
3. Andhra Pradesh Co-operative Central Agriculture Development Bank, Abids, Hyderabad.
4. The Andhra Pradesh State Cooperative Bank Limited, Troop Bazar, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of writ of certiorari after calling for the records in I.D.No.49/89 from the Labour Court, Guntur quash the award in I.D.No.49/89dated 21.08.1995 and consequently direct the respondents 2 to 4 to reinstate the petitioner into service with back wages and all other attendant benefits.

Counsel for the Petitioner: MR.P.SUDHEER RAO

Counsel for the Respondent No.1: THE G.P. FOR LABOUR

Counsel for the Respondent Nos.2 to 4: MR.A.H.RAMA KRISHNA RAO (SC FOR APCOB)

The Court made the following ORDER :

This writ petition is filed by the workman being aggrieved by the award passed by the Labour Court at Guntur in I.D.No.49 of 1989 dated 21.08.1995, wherein, the claim petition filed by him under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') was rejected. The case of the petitioner is that he was appointed as Clerk in Tenali Cooperative Land Mortgage Bank in the year 1968. Subsequently, he was promoted as Supervisor in the year 1969 and he has been performing his duties to the utmost satisfaction of his superiors. While so, he was transferred from Tenali to Duggirala Branch in the year 1982. While he was working at Duggirala Branch, he applied for leave from 07.08.1985 to 19.08.1985. Further he applied for medical leave from 11.08.1985 to 21.08.1985 and again extended the same from 22.08.1985 to till 21.10.1985. While so, the Duggirala Cooperative Agricultural Bank issued proceedings dated 30.08.1985 to the petitioner to explain as to why he was not in a position to attend the duty and why action should not be taken against him. But, he extended the leave again from 22.10.1985 to 05.12.1985 and again extended to 31.12.1985. Therefore, the second respondent issued a notice to the petitioner on 17.12.1985 calling for the explanation to the memo dated 30.08.1985 of the Chairman, Cooperative Agricultural Development Bank, Duggirala. Thereafter, the Andhra Pradesh Co-operative Agricultural Development Bank Limited, Hyderabad issued a notice dated 19.05.1986 to the petitioner to show cause as to why his services should not be forfeited from 12.08.1985 since he was absent from duty from 12.08.1985 to 21.08.1985 as per Regulation 50 of the

Regulations relating to the Service Conditions of the Employees of Centralised Service Cadre (for short 'the Regulations') *vide* letter dated 14.06.1986. Thereafter, by proceedings dated 19.11.1986 a communication was sent to him about the resolution dated 13.10.1986 forfeiting his right to service as per Regulation 50 of the Regulations. Aggrieved by the same, he raised an industrial dispute under Section 2-A (2) of the Act before the Presiding Officer, Labour Court, Guntur and the same was taken on file as I.D.No.49 of 1989.

Before the Labour Court, the petitioner-workman was examined as WW.1 and Exs.W.1 to W.15 were marked and no oral evidence was let in on behalf of the Management but Exs.M.1 to M.3 were marked. The Labour Court after elaborate consideration of the matter came to the conclusion that since the services of the petitioner were forfeited as per the Regulation 50 of the Regulations, the question of termination of the petitioner as defined under Section 200 of the Act or applicability of the provisions of Section 25-F of the Act does not arise and accordingly dismissed the I.D. holding that the petitioner is not entitled for any relief as prayed for. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the respondents, though no counter-affidavit is filed, strenuously contended that once the provisions of Regulation 50 of the Regulations have been invoked, the question of conducting any enquiry into the matter does not arise and the services of the petitioner were rightly forfeited. Further, in pursuance of the impugned proceedings, the petitioner has claimed the benefits such as gratuity etc., therefore, it was not open for him to approach the Labour Court to file a claim petition under Section 2-A(2) of the Act. The very fact that the petitioner has claimed all the benefits in pursuance to the orders passed under Regulation 50 of the Regulations itself would debar the petitioner from claiming that his services were terminated without conducting any detailed enquiry into the matter, and without following the procedure under Section 25-F of the Act. Therefore, the writ petition is devoid of merits and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the award passed by the Labour Court and other material available on record.

At the out set, I am of the opinion that the award passed by the Labour Court is not in tune with the law laid down by the Apex Court. Admittedly, in this case the

services of the petitioner were dispensed with while invoking Regulation 50 of the Regulations, which reads as under:

> "Absence without leave whether in continuation of sanctioned leave or otherwise entails forfeiture of his right to the service unless otherwise ordered by the competent authority."

The gross misconduct is defined under Regulation 112 of the Regulations and Regulation 112 (q) reads as under:

> "(q) Absence without prior permission for more than 10 days."

Admittedly, the absence from duty for more than 10 days entails grave misconduct. It is an admitted fact that the petitioner has committed grave misconduct and though he was issued with the charge sheet, he did not reply for the same. But, that itself does not mean that it is open for the Management to invoke Regulation 50 of the Regulations. It is well settled that for any grave misconduct committed by an employee, by invoking the provisions like Regulation 50 of the Regulations the services of the petitioner cannot be dispensed with. Thus, it amounts to violation of principles of natural justice apart from being contrary to the Regulations in conducting an enquiry into the grave misconduct. In this case, admittedly, except issuing the show cause notice, no enquiry known to law has been conducted. Therefore, the services of the petitioner ought not to have been terminated by simply invoking the Regulation 50 of the Regulations for the grave misconduct committed by him. The order passed by the respondents as confirmed by the Labour Court, does not stand scrutiny of law.

In this regard, it may be apt to refer the judgment of the Supreme Court in ***D.K. YADAV v. J.M.A. INDUSTRIES LIMITED***, wherein it has been held as under:

> "8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In **Mohinder Singh Gill v. Chief Election Commissioner (1978 (1) SCC 405)** the Constitution Bench held that 'civil consequences ' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. *Black's Law Dictionary*, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country… they include… rights capable of being enforced or redressed in a civil action…. In ***State of Orissa v. (Miss) Binapani Devi (1967 (2) SCR 625)*** this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

10. In ***State of W.B. v. Anwar Ali Sarkar (1952 SCR 284)*** per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In ***Menaka Gandhi v. Union of India (1978(1) SCC 248)*** another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

A Division Bench of this Court, while dealing with the similar situation in **MOHD. ABDUL KHADAR & OTHERS v. THE A.P. STATE ROAD TRANSPORT CORPORATION, REP. BY ITS GENERAL MANAGER, MUSHEERABAD AND OTHERS** held that

> "Mr. Prakasha Rao, the learned Standing Counsel for the Corporation, however, on the strength of the observations made in the judgment of the Kerala High Court in **H.M.T. Limited Kalamassery vs. the Labour Court, Ernakulam (1983 (1) SLJ 20)** stated that the view expressed by the Supreme Court in **L Robert D'Souza vs. Executive Engineer, Southern Railways (AIR 1982 SC 854)** has now been referred to a larger Bench and therefore we may await the decision of the larger Bench of the Supreme Court. Such a representation did not find favour with the Kearala High Court and in our opinion rightly so. Merely because a particular view taken by the Supreme Court which constitutes the law of the land is sought to be examined again in some later cases and the same is referred to a larger Bench, the law as laid down does not cease to be binding on this Court. In view of the law of the land as it stands declared in **L Robert D'Souza vs. Executive Engineer, Southern Railways (AIR 1982 SC 854)** we must hold that the termination of the services of the petitioners in these cases constitutes retrenchment and for failure to comply with the requirements of Section 25F of the Industrial Disputes Act such termination orders cannot be sustained. The impugned orders are accordingly quashed and the writ petitions are allowed, but in the circumstances, without costs."

In the instant case neither a detailed enquiry was conducted into the gross misconduct alleged nor the procedure as contemplated under Section 25-F of the Act was followed before termination of services of the petitioner/workman.

For the reasons stated supra, the impugned award is liable to be set aside and accordingly set aside. In the result, the writ petition is allowed and the respondents are directed to reinstate the petitioner into service with all consequential benefits, such as back wages, continuity of service and all attendant benefits. No order as to costs.

C.V. Ramulu, J

Date: 04.07.2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Monday, the fourth day of July, Two Thousand and Five.

To

1. The Presiding Officer, Labour Court, Guntur.
2. Guntur District Cooperative Central Bank Limited, Tenali.
3. Andhra Pradesh Co-operative Central Agriculture Development Bank, Abids, Hyderabad.

4. The Andhra Pradesh State Cooperative Bank Limited, Troop Bazar, Hyderabad.

5. Two CCs to G.P for Labour, High Court of A.P., Hyderabad (OUT)

6. Two CD Copies